

At 7:48 p.m., at its regular meeting of October 16, 2000, **Commissioner Barnes** in accordance with NCGS 143.318, moved the Board convene in closed session to (1) consult with legal counsel (2) discuss acquisition of real property; and (3) to discuss a personnel matter. Her motion received unanimous approval.

Present in the Executive Chambers of the 1924 Courthouse were Chair Robert E. Hibbitts, Vice-Chair Marie H. Huffman, and Commissioners Barbara G. Beatty, Katherine W. Barnes and W. Steve Ikerd. Also, present were Staff Attorneys Debra Nass Bechtel and Jerry E. Hess, County Attorney Robert Oren Eades, County Manager/Deputy Clerk J. Thomas Lundy, Assistant County Manager Steven D. Wyatt, and Director of Utilities and Engineering Barry B. Edwards. Absent was County Clerk Virginia W. Sobotkin.

PROPERTY ACQUISITION - CHARLES S. AND JACK C. WILFONG/CHARLOTTE E., ROBERT THOMAS, AND SARA K. MAUSER

Staff Attorney Debra Nass Bechtel briefly updated the Board on the status of discussions for the purchase of the subject properties.

FRANCHISE AGREEMENT FOR EXCLUSIVE COLLECTION OF MUNICIPAL SOLID WASTE

Staff Attorney Jerry E. Hess informed the Board of periodic inquiries from citizens about being able to only use the County's franchised solid waste hauler, Garbage Disposal Services, Inc., (GDS). The County periodically sent letters to offending contractors and debris/garbage haulers informing them of the County's exclusive contract with GDS and asking them to discontinue this practice. Recently the County had a response to one of these letters. An attorney representing a hauler had called to request a copy of the County's franchise agreement with GDS.

Mr. Hess stated there had been a series of court cases addressing this issue. One case involved Warren County, Kentucky. Huish Detergents operated a laundry detergent manufacturing facility in that County and concluded that it could dispose of its solid waste more cheaply if it could do the job itself or contract with a firm other than Monarch Environmental, the City's exclusive franchised hauler. Huish filed suit in federal district court alleging that Warren County's franchise arrangement amounted to flow control in violation of the Commerce Clause. The district court held that Warren County was acting as a market participant by purchasing waste collection and disposal services from Monarch and, therefore, the franchise arrangement was exempt from Commerce Clause scrutiny. The Court dismissed the suit.

The Court of Appeals reversed. It held that Warren County could not avail itself of the market participant exception because it was not acting in a propriety capacity in the solid waste market. It was not using county funds to purchase solid waste collection or processing services or selling the County's own solid waste services. Warren County should have declared itself a market participant.

He noted another factor of the Warren County suit. Landfills were available just over the State line in Ohio. This would not be the situation in Catawba County. There were no nearby landfills in a neighboring State; therefore, Catawba County's requirement for exclusive use of its landfill by the franchised hauler may not be viewed as discriminating against out-of-state disposal sites.

He then discussed Catawba County's situation. He focused on North Carolina law which allowed counties and cities to enter into exclusive contracts with solid waste haulers. Catawba County's solid waste ordinance was based on those State statutes. Consequently, anyone wishing to challenge the County's ordinance must first challenge the State statutes. Such a challenge, he said, would likely confront a great deal of resistance since many NC counties used the exclusive hauler provisions. In addition, many of the larger haulers such as GDS, BFI, and Waste Management Systems would be against giving up the exclusive contracts they had with many North Carolina counties.

If the State Statute was found to be unconstitutional, he continued, it would most likely be prospective and not retrospective, which meant the County may have to change its ordinance in the future, but would not be penalized for past practices.

After discussion of the foregoing agenda Mr. Edwards and Mr. Hess left the Executive Chambers.

ADJOURNMENT

At 8:25 p.m., there being no further business, the Board returned to regular session and adjourned.

Robert E. Hibbitts, Chair

J. Thomas Lundy, Deputy Clerk